

**FLAGSTAFF PULLIAM
AIRPORT
RENTAL CAR CONCESSION/LEASE AGREEMENT

BETWEEN

CITY OF FLAGSTAFF

and

AVIS BUDGET CAR RENTAL, LLC**

ATTACHMENT “A”

FLAGSTAFF PULLIAM AIRPORT RENTAL CAR CONCESSION/LEASE AGREEMENT

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FLAGSTAFF PULLIAM AIRPORT
RENTAL CAR CONCESSION/LEASE AGREEMENT

This Concession/Lease Agreement (the "Lease") is made as of the 1st day of February, 2011, by and between the City of Flagstaff (the "City") an Arizona municipal corporation with offices at 211 West Aspen Avenue, Flagstaff, Arizona 86001, and Avis Budget Car Rental, LLC ("Lessee"), a Limited Liability Company, with offices at 6 Sylvan Way, Parsippany, New Jersey 07054.

RECITALS

A. The City is the owner and operator of Flagstaff Pulliam Airport (the "Airport") and the Airport Terminal Building (the "Terminal Building"), both located at 6200 Pulliam Drive, City of Flagstaff, Coconino County, Arizona;

B. Lessee desires to operate an automobile rental service at the Airport and to maintain a counter for operation of the automobile rental service in the Terminal Building; and

C. The City desires to have these services provided at the Airport for the convenience of the passengers and patrons of the Airport;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the City and Lessee agree as follows:

ARTICLE I - DEFINITIONS

As used in this Lease, the following terms, phrases, words and their derivations shall have the meaning given herein. Words in the singular shall include the plural, and masculine terms and pronouns shall include the feminine and neuter, and vice-versa, as the context may require.

A. "Airport" means the Flagstaff Pulliam Airport, located at 6200 Pulliam Drive, City of Flagstaff, Coconino County, Arizona, and all property and improvements contained within its boundaries.

B. "Airport Director" means the City's manager of the Airport.

C. "City" means the City of Flagstaff, Arizona, as represented by the Council of the City of Flagstaff, and where this Lease speaks of "approval by the City", approval means action by the Council of the City of Flagstaff, unless otherwise indicated.

D. "C.F.R." means the Code of Federal Regulations, as amended, and as the same may be amended from time to time.

E. "Concession Fee" means a fee which is the greater of a fee based on a percentage of Gross Revenues or Minimum Annual Guarantee (% fee or MAG), paid to the City for the privilege of doing business at the Airport for the term of this Agreement. This fee shall be free from any and all claims, deductions or setoffs against the City.

F. "CPI" means the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, United States Department of Commerce, or such other index that said Bureau of Labor Statistics may later publish in lieu of the Consumer Price Index.

F. "DBE" means a "disadvantaged business" (or disadvantaged business enterprise) as defined in 49 C.F.R. Subtitle A, Part 23.

G. "DOT" means the United States Department of Transportation, authorized and administered pursuant to the provisions of 49 U.S.C. § 102.

- H. "FAA" means the Federal Aviation Administration, authorized and administered pursuant to the provisions of 49 U.S.C. §§ 40101, et seq. and 49 C.F.R. Chapter I.
- I. "FAR" means the Federal Aviation Regulations, being 49 C.F.R. Chapter I.
- J. "Fixed Rent" means Lessee's fixed rent obligation based on the square footage of the Rental Car Counter and Office Space, as provided by Section A of Article IV.
- K. "Gross Receipts" means the aggregate amount of all revenue realized by the Lessee from its automobile rental service at or from the Airport, whether paid in cash, by credit or in-kind, determined without regard for Lessee's payment of any and all income, property, excise or other taxes levied on Lessee's activities, facilities, equipment or property, for which no deduction shall be made, except as otherwise expressly provided herein.
1. Gross Receipts shall include, but shall not be limited to: "drop charges" charged to patrons renting a vehicle at the Airport but delivering the vehicle to another automobile rental service office at the patron's destination; airport user fees or concession recovery fees recovered from the customer; all consideration received by Lessee for insurance coverage incidental to the rental of vehicles at the Airport; all revenues received by Lessee from or relating to the rental of vehicles at the Airport but delivered elsewhere, or from the rental of a vehicle exchanged for a vehicle delivered at or from the Airport, within a radius of thirty (30) miles from the Airport, when the rental agreements for such vehicles are to run consecutively; and all revenues realized by Lessee, the origin of which involved customer contact at the Airport, regardless of where such revenues are generated or paid.
 2. Notwithstanding the foregoing, Gross Receipts shall not include: federal, state or local transaction privilege, sales or similar taxes that are separately stated and collected from Lessee's customers; revenue realized by the Lessee as reimbursement for fueling motor vehicles in advance (commonly known as the "fuel purchase option") or refueling motor vehicles upon return by the customer; amounts received as insurance proceeds or otherwise for damage, loss, conversion, or abandonment of or to Lessee's automobiles or other property, or received from customers under Lessee's right to recover from its customers for damages to the rental vehicles; proceeds received by the Lessee from the sale of its vehicles; and credits given by Lessee to its customers for such things as deposits and out-of-pocket purchases for gas, oil, or emergency service.
 3. A vehicle shall be deemed to be rented at the Airport and consideration realized by Lessee therefore included in Gross Receipts, if: the rental contract for the vehicle is negotiated in whole or in part at the Airport, even though the vehicle may be delivered elsewhere within a radius of thirty (30) miles of the Airport; an advance registration or reservation for the vehicle has been made for any person at the Airport; or the vehicle is received within a radius of thirty (30) miles from the Airport, in exchange for a vehicle originally rented (or deemed rented hereunder) at the Airport, when the rental agreements for both vehicles run consecutively.
- L. "Lessee" means Avis Budget Car Rental, LLC ("Lessee"), a Limited Liability Company (type of organization), with offices at 6 Sylvan Way, Parsippany, New Jersey 07054, entering into this Lease as the operator and tenant of the Premises, as hereinafter defined.
- M. "Minimum Annual Guarantee" means a minimum amount to be paid to the City on an annual basis during each contract year as set forth in Section B(2) of Article IV.
- N. "Office Space" means that space within the Terminal Building leased to Lessee, consisting of Office and Counter Space "C" as shown and further described in Exhibits A-1 and A-2 attached to this Lease.

- O. "Percentage Rent" means that portion of Lessee's rent obligation equal to ten percent (10%) of its Gross Receipts, as provided by Section B of Article IV.
- P. "Premises" means the Office/ Counter Space and Vehicle Spaces.
- Q. "Rent" means Lessee's Fixed Rent and Percentage Rent, along with any other sums or amounts designated as additional rent.
- R. "Terminal Building" means that building in which the Office Space is located owned and operated by the City located at 6200 Pulliam Drive, at the Airport.
- S. "U.S.C." means the United States Code, as amended, and as the same may be amended from time to time.
- T. "Vehicle Spaces" means twelve (12) parking spaces in the Airport parking lot adjacent to the Terminal Building for the parking and vehicle cleanup of Lessee's ready-to-rent rental vehicles, two (2) drop-off spaces on the curb adjacent to the Terminal Building for the drop-off and short-term parking of Lessee's rental vehicles as shown, generally, in Exhibit B-1 and B-2 attached hereto.

ARTICLE II - LEASE OF PREMISES AND LICENSE TO USE FACILITIES

A. LEASE AND USE OF PREMISES

1. General

The City, for and in consideration of the rentals and fees herein reserved, and of the covenants, conditions and agreements to be done and performed by Lessee, does lease and demise to Lessee and Lessee does take to and from the City, the Premises upon the terms, covenants and conditions set forth in this Lease. Lessee warrants that it has physically inspected the Premises and accepts the Premises in their present condition, "as is." Lessee shall occupy and operate the Premises solely as set forth in this Lease, and for no other purpose other than such business purposes as may be necessary and incidental thereto, specifically: Lessee shall, on a nonexclusive basis, offer to the general public passenger vehicle rental services. The term "on a nonexclusive basis" in this context means that during the term of this Lease there will be a maximum of three (3) other rental car concessions at the Airport, unless the number of deplaning passengers exceeds 100,000 for a period of one calendar year at any time during the term of this Lease, in which event, the City reserves the right to advertise and request bids for one or more additional rental car concessions. Lessee may use the Premises as follows: the Office Space for all reservation, customer service, handling, billing and related activities as may be necessary or incident to Lessee's services at the Premises; the Vehicle Spaces for such purposes as set forth in the definition in Article I, Section U; and either or both for such other purposes as the Airport Director shall expressly, in writing, approve.

2. Exchange of Premises

The City may at any time, in its sole discretion, substitute for all or any part of the Premises such comparable space at the Airport and the Terminal Building as it shall, in its sole discretion determine, provided that, in such event, the City shall reimburse Lessee for its reasonable and necessary expenses incurred in relocating its operations to substitute space (not including, however, any lost revenues or profits occasioned by relocation), and the Fixed Rent hereunder shall be adjusted if the size of the substitute space shall vary materially from the Premises leased. No rental car concessionaire at the Airport shall be substantially disadvantaged compared with any other rental car concessionaire at the Airport as a result of the City's substitution of all or a portion of its leased premises under this subsection.

3. Overflow Parking and Cleanup Space

Notwithstanding anything to the contrary contained in this Lease, the City may substitute for any space provided by the City to the Lessee for the purposes of overflow parking and cleanup (whether under this Lease or otherwise), any other available space which is, in the discretion of the City, reasonably comparable to that for which substitution is made, if, when and for so long as such substitution is, in Lessor's discretion, necessary to accommodate renovations or implement changed security procedures at the Airport. The City shall reimburse Lessee for Lessee's reasonable and necessary expenses incurred in relocating its operations to substitute space (not including, however, any lost revenues or profits occasioned by relocation).

B. LICENSE FOR USE OF AIRPORT FACILITIES

1. Airport Facilities

Subject to all rules and regulations governing the use of the Airport, Lessee shall have a nonexclusive right to use all vehicular roadways and parking areas of the Airport (except for areas that may have been reserved to the exclusive use of others in accordance with the directions of the Airport Director) for the operation of Lessee's operations hereunder and for the carriage of persons, property, cargo and/or mail incident thereto, including, without limitation, parking, loading and unloading persons, property, cargo and/or mail, as may be necessary or incident to Lessee's operations under this Lease. Notwithstanding the foregoing, the City reserves the right to assess a reasonable charge for public motor vehicle parking of rental cars if said vehicles are parked in areas other than designated for rental car parking (e.g. public parking lot). Lessee shall pick up and drop off patrons, and all of its vehicles shall be parked only in such areas designated for such purposes by the Airport Director.

2. Common and Joint Use Areas

Subject to all rules and regulations governing the use of the Airport, Lessee, Lessee's agents and servants, patrons and invitees and Lessee's suppliers of service and furnishers of materials shall have the right of ingress to and egress from the Premises, the Terminal Building and the Airport and a nonexclusive license to use all common areas of the Airport open to the public, provided that such ingress, egress or use does not interfere with normal operations of the Airport or of other operations in the Terminal Building.

C. CONSTRUCTION OF TENANT IMPROVEMENTS

1. General

Lessee may, at its sole cost and expense, provide and install any necessary improvements, counter area, facilities, decorations, signs, fixtures, and equipment for the Premises, provided that improvements to the Vehicle Spaces shall be limited to signs at the "rediparking" and drop-off spaces complying with those rules set forth in this Lease regarding signage. All such improvements, facilities, decorations, fixtures, and equipment shall be made or installed at the Premises only with the prior written consent of the City's Airport Director following Lessee's submission of a description of the proposed installations to the Airport Director no less than fourteen (14) days prior to installation. Those improvements, facilities, decorations, fixtures and equipment of, in or to the Office Space shall be of high quality, safe, modern in design, attractive in appearance and shall be in general keeping with the decor of the Terminal Building and the areas adjoining and surrounding the Office Space.

2. Permits and Authorizations

Lessee shall make no improvements to the Premises until it has first, at its sole cost and expense, submitted all design and construction plans, specifications and related documents for the improvements to the City's Building and Safety Division, and the Division has issued a building permit for the improvement. Lessee shall further diligently pursue and obtain all other permits, licenses and authorizations required for the construction of the improvements and operation of the Premises.

3. Insurance

Before commencing any improvement or equipment installation at the Premises, Lessee shall require that its construction contractors procure and maintain insurance for such construction and installation protecting both Lessee and City, as well as the construction contractors, with policy amounts and coverage as the City shall in each instance determine, and shall provide certificates of insurance with respect to all of the policies to the City prior to commencement of construction.

4. Construction Standards, Rules and Regulations

All improvements, additions or alterations constructed by Lessee at the Premises shall be constructed in a good and workmanlike manner and shall conform to all applicable statutes, ordinances, building codes, rules and regulations of any governmental authority as may have jurisdiction, and to the general architectural scheme of the Terminal Building. Lessee shall require in all contracts for construction that all contractors also comply with all applicable statutes, ordinances, codes, rules and regulations. Lessee's construction work shall be subject to inspection, during reasonable business hours, by the City's Building and Safety Division and its authorized personnel. Lessee shall keep the Premises free and clear of liens for labor and material and shall hold the City harmless from any liability arising therefrom. Lessee shall make no structural alterations to the roof, walls or floors of the Premises without the City's prior written consent. Nothing contained in this Section shall prevent Lessee from making a nonstructural alteration to the Office Space.

5. Cost of Improvements

The construction of any and all improvements, alterations and additions to the Premises by or for Lessee shall be performed at Lessee's sole cost and expense.

6. Additional Alterations, Additions or Replacements

Lessee shall make no alterations, additions, replacements or improvements to the Premises, install any equipment that requires any electrical connection (other than by ordinary plug into an existing receptacle) nor make any changes in those electrical connections installed on the Premises, without the prior written consent of the Airport Director. Any electrical service other than that provided at the execution of this Lease shall be installed and provided at the sole cost and expense of Lessee.

7. Signs

Except as may be provided otherwise in this Lease, Lessee shall not erect, install, operate or cause or permit to be erected, installed or operated, any signs or similar advertising devices in or upon the Premises without having first obtained the written consent of the Airport Director, which will not be unreasonably withheld, so long as the signs or similar advertising devices do not conflict with the rights of other concessionaires or lessees at the Airport and conform to the requirements of the City's Sign Code, which provides conditions concerning factors including, but not limited to, size, type, content and method of installation of signs.

8. Security Installations

The Airport has adopted a Security Program ("Security Program") in accordance with the Aviation and Transportation Security Act, 49 U.S.C. § 40101 et seq., and 49 C.F.R. Part 1542, and Lessee agrees to abide by all rules and regulations with respect to the Security Program.

D. MAINTENANCE OF PREMISES AND IMPROVEMENTS

1. General Maintenance

Lessee shall, at its sole cost and expense, maintain the Premises and all of its improvements, additions or alterations at the Premises and elsewhere at the Airport (if any), in good working order and in such condition that shall be based on a standard of care reflecting prudent property management, reasonable wear and tear excepted.

2. Preventive Maintenance and Repair

Lessee shall perform at its sole expense, ordinary preventative maintenance and ordinary upkeep and non-structural repair of all of its facilities, personal property and equipment in or upon the Premises and elsewhere at the Airport (if any), including, but not limited to, fixtures, doors and windows, floor coverings, counters, as well as all electrical work, plumbing appliances and fixtures located within the Premises, provided, however, that the City shall provide snow removal for the Vehicle Spaces, along with its snow removal at Airport parking lots generally.

3. Off-Premises Maintenance and Repair

Lessee shall, at its sole cost and expense, immediately repair any and all damage in or to any area of the Airport or the Terminal Building occasioned by the fault or negligence of Lessee, its servants, agents, or employees, and shall immediately remove any litter, debris, petroleum products or other liquids and/or grease that may result from its operations or the activities of its employees, agents, passengers or suppliers.

4. Maintenance or Repair by the City upon Lessee's Default

- (a) In the event that Lessee fails to perform any obligation required by this Subsection D(4) to be performed by Lessee at Lessee's cost for a period of fifteen (15) days after receipt of written notice from the City to do so, the City, upon the expiration of the fifteen (15) day period may, but shall not be obligated to, perform that obligation of Lessee, which may include entry onto the Premises if reasonably necessary. All maintenance or repairs executed by the City under this Subsection D(4) shall be performed in a good and workmanlike manner.
- (b) Notwithstanding the foregoing, in the event that Lessee's failure to perform such of its obligations under this Subsection D(4) may endanger the health or safety of the public or of any passenger, invitee or employee at the Airport, then the City may, but shall not be obligated to, immediately perform such obligation of Lessee upon prior written notice of its intent to do so, without awaiting the expiration of the mentioned fifteen (15) day period.
- (c) In the event that the City shall perform any obligation of Lessee under this Subsection D(4), then the City shall invoice Lessee for the reasonable cost and expense of performing the obligation, plus a fifteen percent (15%) administrative charge, and Lessee shall pay, as additional rent, such amount on or before the fifteenth (15th) day of the next month following, along with its payment of Fixed Rent and other charges for the previous month.

- (d) The City shall not be liable to Lessee for any loss, cost or expense to Lessee resulting from the City's performance of Lessee's obligations in accordance with the provisions of this Subsection D(4).

E. ENTRY AND INSPECTION OF PREMISES

1. Entry and Inspection

The City and its authorized officers, employees, agents, contractors, subcontractors, or other representatives shall have the right to enter upon the Premises:

- (a) during reasonable business hours to determine whether Lessee has complied and is complying with the terms and conditions of this Lease;
- (b) during reasonable business hours for inspecting the Premises and for fulfilling the City's obligations hereunder, provided, however, that such entry shall be at such times and in such manner as not to interfere unreasonably with the operations of Lessee; and
- (c) at any time as may be required by an emergency at the Terminal Building or for emergency repairs or maintenance, without any liability or responsibility to Lessee for loss of business.

2. No Termination or Interference

No such entry by or on behalf of the City upon the Premises shall cause or constitute a termination of this Lease nor be deemed to constitute an interference with the possession thereof nor constitute a revocation of or interference with any of Lessee's rights in respect thereof for exclusive use of the leased Premises.

ARTICLE III – TERM

A. INITIAL TERM

This Lease shall be effective from February 1, 2011 through January 31, 2014, and shall continue in force and effect, unless sooner terminated as provided in this Lease.

B. RENEWAL

Upon completion of its initial term, this Lease may be renewed for two additional one (1) year terms, subject to approval by the City Council and Lessee, provided that Lessee provides the Airport Director with at least ninety (90) days prior written notice of Lessee's desire to renew the term of this Lease.

ARTICLE IV – RENTS

A. FIXED RENT

Lessee shall pay to the City an aggregate annual Fixed Rent for the Premises, Counter “C”, (400.08 sq. feet), in the sum of \$12,262.45 (twelve thousand, two hundred sixty-two dollars and 45/100), broken into twelve equal payments of \$1021.87 (one thousand twenty-one dollars and 87/100), due in advance, on the first day of each month of the term of this Lease.

B. PERCENTAGE RENT

1. Concession Fee

The Lessee shall pay to the City, on a monthly basis, without notice or demand, a concession fee which is the greater of a fee based on percentage of 10% of Gross Revenues or Minimum Annual Guarantee (% fee or MAG). Lessee shall, on or before the twenty-fifth (25th) day following each and every month during the term of this Lease, submit to the City a detailed statement showing its Gross Receipts from its operations at the Premises for the preceding calendar month, in such reasonable detail and breakdown as the City may reasonably require, certified by a responsible officer or designee of Lessee, along with payment of either its Percentage Rent, for and during such preceding month, equal to ten percent (10%) of Lessee's Gross Receipts, or the Minimum Annual Guarantee.

Lessee's obligations under this Section B (and such other provisions of this Article IV that concern the calculation and payment of Lessee's Percentage Rent hereunder) shall survive any termination of this Lease, until all of Lessee's Percentage Rent obligations shall be paid in full. Furthermore, Lessee shall collect from its customers a fee no more than 11.1%, by adding it as a separate line item charge on each customer rental agreement. This line item shall be designated as an "airport user fee" or "concession recovery fee" on each customer rental agreement.

2. Minimum Annual Guarantee: During the term of this agreement, Lessee agrees to pay to the City a Minimum Annual Guarantee (MAG) of:

First Year: \$148,000.00 (one hundred forty-eight thousand dollars)
Second Year: \$148,000.00 (one hundred forty-eight thousand dollars)
Third Year: \$148,000.00 (one hundred forty-eight thousand dollars)

3. Percentage Fee: Percentage fee shall be the amount equal to ten percent (10%) of Lessee's Gross Revenues.

C. PRO-RATED RENT

Rent for any period during the term or extended term of this Lease that is for less than one month (if any) shall be pro-rated accordingly.

D. CPI ADJUSTMENT

The Fixed Rent shall be adjusted on July 1st of every year, the commencement of the City's fiscal year, during the term of this Lease and any extension or renewal of such term by the same percentage as that represented by the increase, if any, in the Consumer Price Index for All Urban Consumers ("CPI") most recently published by the Bureau of Labor Statistics, United States Department of Commerce (or such other index that said Bureau of Labor Statistics may later publish in lieu of the Consumer Price Index) at that time, as compared with the CPI most recently published one year prior.

E. ACCOUNTING AND AUDIT

1. Books and Records

Lessee shall, with respect to all business done by it at the Premises, keep true and accurate account records and books which shall, at a minimum, include all of Lessee's reservation registers and records, and show all sales made and services performed for cash or credit or

otherwise, without regard to whether paid for or not, and all other items included or considered in determining Lessee's Gross Receipts, all in a manner and format from which the City may reasonably and accurately determine Lessee's Gross Receipts. Lessee shall either maintain account records and books at a location within the city limits of the City as shall be available and convenient for inspection by the City as provided in Subsection 3 of this Section E, for a period of at least three (3) years from the time of entry of each item shown therein or provide the account records and books to the City upon thirty (30) days' written notice. The City reserves the right to prescribe or change the form in which Lessee shall provide any reports required under this Lease, and their method and time of submission.

2. Annual Reports

Within ninety (90) days after the end of each lease year during the term of this Lease and any extension or renewal of such term, Lessee shall furnish to the City an annual accounting statement prepared according to generally accepted accounting principles, in such form as the City may reasonably require, which is a true disclosure of the operations of Lessee at the Premises, including but not limited to Lessee's Gross Receipts and Percentage Rent for the previous year. Lessee shall simultaneously pay to the City excess Percentage Rent due, if any, for such preceding lease year over and above the Percentage Rent paid. If Lessee shall have paid to the City Percentage Rent in excess of the greater of the Percentage Rent due under Article IV(B)(1) above during the preceding contract year, the City shall credit Lessee for such excess against future payments, or in the last year of the Lease, the City shall refund such excess amount, if any, to Lessee within one hundred and twenty (120) days of the end of the Lease. Lessee's obligations under this Subsection E(2) shall survive any termination of this Lease until Lessee shall have provided to the City the annual accounting statement required for the last completed accounting period not previously reported under the provisions of this subsection.

3. Audit

The City and its employees, agents and authorized representatives shall have the right at all reasonable times and during all business hours, except as otherwise provided in Subsection 1 of this Section E, to inspect and examine such records, registers, contracts, books and other data as may be necessary to confirm Lessee's Gross Receipts for its operations at the Premises. The City may conduct any such audit in any manner consistent with generally accepted auditing standards, including, but not limited to, statistical sampling. If any such inspection or audit shall disclose any willful and intentional misstatement, the City may, in its sole discretion, cancel and terminate this Lease forthwith, without penalty or further liability.

4. Audit Deficiency and Protest

In the event that an audit by the City shall disclose any deficiency in Lessee's payments of Percentage Rent hereunder, resulting from discrepancies in its determination of Gross Receipts or otherwise, the City shall promptly notify Lessee in writing of the deficiency. Upon its receipt of such notice, Lessee shall either:

- (a) within sixty (60) days submit to the City its written consent to the City's audit findings, along with payment in full of the deficiency determined thereby; or
- (b) within sixty (60) days (or at such later time as the City Manager may, upon a timely filed written request therefore, provide in writing) submit to the City Manager a written protest and request for redetermination, setting forth in detail Lessee's grounds for the protest and the amount of the audit deficiency that it claims to be in error, along with supporting information and/or documentation as shall be appropriate.

The City shall not accept any protest, petition or request for redetermination that is not filed within the sixty (60) day period (or such later date allowed by the City Manager). In the absence of a submission of a timely written protest as provided above, the deficiency determined by the audit shall become immediately due and payable at the expiration of the sixty (60) day period, and Lessee shall be deemed to have waived and abandoned all right to question or protest the City's audit findings.

3. Deficiency Hearing and Redetermination

- (a) As soon as may be practicable following the City Manager's receipt of a timely submitted written protest, the City Manager shall either order the audit deficiency redetermined in accordance with Lessee's protest, or notify Lessee of the time, date and place for a hearing on the matter.
- (b) The City Manager, or such other hearing officer designated by the City Manager, shall hear the matter informally, without regard to formal rules of procedure or of evidence, and, within thirty (30) days of the close of the hearing, shall make such order in the matter as appears to be just and lawful and shall mail a copy of the order to Lessee.
- (c) The deficiency stated in the City Manager's or hearing officer's order shall be immediately due and payable upon receipt by Lessee. Lessee's failure to pay such deficiency within thirty (30) days of its receipt of the order shall constitute a material breach of this Lease and shall give the City the option of immediately terminating the Lease in accordance with the provisions of Article VII.

G. LATE PAYMENT

All amounts due from Lessee to the City under this Lease that are not paid by Lessee when due shall be subject to a penalty of ten percent (10%) of such amount due, plus interest at the rate of one (1%) percent per month or fraction of a month from the time due and owing until paid. The penalty and interest shall be payable as additional rent hereunder, subject to all the terms and conditions of this Lease.

ARTICLE V - LESSEE'S OPERATIONS

A. GENERAL

Lessee shall not use or permit the use of the Premises, the Terminal Building, the Airport or any part thereof, for any purpose or use other than as authorized by this Lease without the prior written consent of the City.

B. COMPLIANCE WITH LAWS, RULES AND REGULATIONS

1. General

Lessee, its employees, representatives and agents shall comply at all times with all present or future laws, rules, ordinances and regulations, and all amendments or supplements thereto, governing or relating to the use of the Airport, the Terminal Building and/or the Premises, as may from time to time be promulgated by federal, state or local governments and their authorized agencies.

2. Taxes, Licenses and Permits

Lessee shall promptly pay all taxes, excises, license fees and permit fees of whatever nature applicable to its operation and lease of the Premises. Lessee may elect, however, at its own cost and expense, to contest any such tax, excise, levy or assessment, provided that such contest is in accordance with law and does not result in a violation by Lessee of any law, rule, regulation or ordinance, or result in any lien against the Premises, the Terminal Building or the Airport. Lessee shall keep current municipal, state or federal licenses or permits required for the conduct of its business. Lessee shall, upon reasonable demand, display to the Airport Director any and all permits, licenses, authorizations or other evidences of compliance with such laws, rules and regulations.

3. Airport Rules and Regulations

Lessee covenants and agrees to observe and obey all reasonable rules and regulations adopted by the City with respect to use of and the conduct and operation of the Airport, the Terminal Building and/or any additions or improvements therein.

4. Energy Conservation

Lessee shall comply with all City rules, regulations and orders pertaining to energy conservation and management, to the extent that such rules, regulations and orders do not unduly infringe on Lessee's rights and privileges granted herein.

5. Compliance with Airport Improvement Program

Lessee covenants and agrees that this Lease may be amended by the City, without consent of Lessee, in any manner necessary to comply with any requirement of the Federal Aviation Administration or other instrumentality of the federal government or state of Arizona in order for the City to qualify or maintain its qualification under the Airport Improvement Program, as authorized and administered under the Airport and Airway Improvement Act of 1982 (Public Law 97-248, codified at 49 U.S.C. §§ 47101, et seq.), as amended and as the same may be amended from time to time.

6. Compliance with FAA Assurances

Lessee covenants and agrees to comply in all respects with those FAA Airport Assurances, dated March 2005 and attached hereto as Exhibit C, and any subsequent amendments thereto (in which the term "sponsor" shall be deemed to mean and include the City), to the extent that their terms may be applicable to Lessee and its operations hereunder.

C. SANITARY OPERATION

1. General

Lessee shall maintain and operate the Premises in a safe, clean, orderly and inviting condition at all times satisfactory to the City. Lessee shall always conduct its operations on the Premises in a manner using all available and practical devices to reduce to a reasonable minimum, considering the nature and extent of Lessee's operations, the emanation from the Premises of noise, vibration, movement of air, fumes and odors, so as not to unreasonably interfere with the use of other premises adjoining these Premises or elsewhere at the Airport. Lessee shall always conduct its operations in all parts of the Airport in accordance with the current regulations of the United States Environmental Protection Agency, and of other applicable federal, state and local authorities.

2. Refuse and Janitorial Service

Without limiting the generality of the foregoing, Lessee shall:

- (a) provide and pay for janitorial service within the Office Space; and
- (b) remove, not less frequently than at the close of each business day, all refuse and trash from the Premises and such other areas of the Airport as it shall regularly use and place all refuse and trash in such container or containers as the City may from time to time designate, separately disposing of recyclable, hazardous or other refuse items in the manner and at the places as the City may from time to time designate.

3. City's Right to Cure Default

In order to maintain a high level of custodial services at the Airport, the City, upon a default of Lessee in its obligations under this Section, may provide such necessary custodial services within the Premises or without, and Lessee shall, in such event, pay to the City the cost of such custodial services as additional rent hereunder, plus a fifteen percent (15%) administrative charge, on the fifteenth (15th) day of the next month following, along with its payment of Fixed Rent and other charges for the previous month.

D. BUSINESS OPERATIONS

1. General

Service provided by Lessee at the Premises and elsewhere at the Airport shall be prompt, clean, courteous and efficient.

2. Hours of Operation

Lessee shall keep the Premises open for business, having attendants on duty and offering its rental vehicles to the public, during all hours that the Terminal Building is open, except as the Airport Director may otherwise authorize in writing. Lessee acknowledges that the hours of operation of the Terminal Building and Airport support services are, at the inception of this Lease, 6:00 AM to 11:00 PM, and are subject to such reasonable changes as the Airport Director shall determine in his sole discretion. In the event that Lessee shall require the provision of these services or facilities beyond the normal hours of operation, then the City shall invoice Lessee for the fully burdened hourly cost of such Airport personnel as are necessary to provide these services and/or facilities (but not less than one (1) hour for each such personnel) and such other expenses incurred by the City in connection with providing these services or facilities, plus a ten percent (10%) administrative charge, and Lessee shall pay, as additional rent, this charge on or before the fifteenth (15th) day of the next month following, along with its payment of Fixed Rent and other charges for the previous month.

3. Control of Personnel

Lessee shall, at the leased Premises and elsewhere at the Airport, exercise reasonable control over the conduct, demeanor and appearance of its employees, agents and representatives and the conduct of its contractors and suppliers. Upon objection from the Airport Director to Lessee concerning the conduct, demeanor or appearance of any such persons, Lessee shall within a reasonable time remove or correct the cause of the objection. Lessee shall require all of its employees, agents, representatives and independent contractors hired by Lessee working in view of the public in and in the vicinity of the Terminal Building, to wear clean and neat attire and to display appropriate identification, and shall require all of its employees to conduct themselves in a professional manner.

4. Vehicles

Lessee shall at all times maintain a number of rental vehicles reasonably adequate to meet public demand, taking into consideration the varying seasonal requirements of the traveling public. Lessee shall maintain, at its sole cost and expense, all vehicles and equipment used in the conduct of Lessee's business in good mechanical condition, free from known defects and in a clean and presentable condition. Lessee shall only store wrecked or inoperable vehicles at the Airport in areas designated by the Airport Director and for no longer than seventy-two (72) hours, unless the Airport Director expressly agrees otherwise.

5. Solicitation and Advertising

Verbal solicitation of Lessee's business may be made only from behind the counter of Lessee's Office Space, and Lessee shall prohibit and restrain its agents, servants and employees from loud, noisy, boisterous, or otherwise objectionable solicitation. Lessee may identify and advertise its vehicle rental service at its Office Space in a manner comparable to the reasonable advertising of other automobile rental companies operating in the Terminal Building. All advertising materials of whatever nature, including but not limited to brochures, rate cards, schedules, forms, etc., shall not unduly clutter the counter at Lessee's Office Space, and the counter space shall be maintained in a clean and orderly manner. All materials displayed at Lessee's Office Space shall be subject to the approval of the Airport Director.

6. Public Address System

Lessee may use the Airport public address system only with the consent of the Airport Director and in accordance with the Airport's public address system policy. Lessee shall not install or cause to be installed any other public address system at the Airport without the prior written consent of the Airport Director.

7. Security

Lessee acknowledges that all areas airside of the Terminal Building are strictly controlled, and Lessee shall not permit its employees, agents, invitees, patrons and/or vehicles to enter these areas other than as authorized by the Airport Director.

E. LIMITATIONS ON LESSEE'S USE OF THE PREMISES

In the conduct of its business operations at the Premises, or in connection with the exercise of any right or privilege under this Lease, Lessee shall not:

1. do, or permit its agents, employees, contractors, directors or officers to do anything at the Airport that may interfere with the effectiveness or accessibility of the Airport's drainage and sewage system, electrical system, air conditioning system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, if any, installed or located on or within the Premises or the Airport;
2. do, or permit its agents, employees, contractors, directors or officers to do any act or thing at the Airport that would invalidate or conflict with any fire or other casualty insurance policies covering the Airport or any part thereof;
3. dispose of, or permit its agents, employees, contractors, directors or officers to dispose of any waste material taken from or products used at the Premises or elsewhere at the Airport (whether liquid or solid) into the sanitary or storm sewers at the Airport unless the waste material or products have first been properly treated by equipment installed with the approval of the Airport Director for that purpose;

4. keep or store, during any twenty-four (24) hour period, flammable liquids within the enclosed portion of the Premises in excess of Lessee's working requirements during the twenty-four (24) hour period, except in storage facilities especially constructed for these purposes in accordance with standards established by the National Board of Fire Underwriters and approved by the Airport Director from the standpoint of safety; any such liquids having a flash point of less than one hundred degrees Fahrenheit (100° F) shall be kept and stored only in safety containers of a type approved for such purpose by the Underwriters Laboratory;
5. do or permit its agents, employees, contractors, directors or officers to do any act or thing at the Airport that would conflict with FAR Part 139 or jeopardize the Airport's operating certificate;
6. do, or permit its agents, employees, contractors, directors or officers to do any act or thing in conflict with any TSA approved security plan that may be adopted by the Airport; or
7. make use of the leased Premises or any other part or area of the Airport in any manner that might interfere with the landing and taking off of aircraft at or from the Airport, or would otherwise constitute a hazard. In the event the covenant of this Subsection 7 is breached, the City reserves the right to enter upon the Premises and/or any other property of Lessee at the Airport and cause the abatement of the interference at the expense of Lessee and without liability of any kind to the City.

F. LIENS

Lessee shall not permit or suffer to be placed on the Premises, or any fixture, addition, betterment or improvement thereto any lien of any nature, including but not limited to tax liens and liens arising out of or because of any construction or installation performed by or on behalf of Lessee or any of its contractors or subcontractors upon the Premises or arising out of or because of the performance of any work or labor to it or them at the Premises or the furnishing of any materials to it or them for use at the Premises. Should any lien be made or filed, Lessee shall bond against or discharge the same within ten (10) days after the lien is placed and shall promptly notify the Airport Director of the steps taken to remove the lien or protect the Premises from the lien.

G. INDEMNIFICATION AND INSURANCE REQUIREMENTS

1. INDEMNIFICATION: Vendor (as "indemnitor") agrees to indemnify, defend and hold harmless the City (as "indemnitee") from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of the acts or omissions of indemnitor, its officers, officials, agents, employees or volunteers relating to this Agreement.
2. INSURANCE: Vendor shall procure and maintain until all of its obligations under this Agreement have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property that may arise from or in connection with this Agreement.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect vendor from liabilities that might arise out of the performance of the work under this Agreement by vendor, its agents, representatives, employees or sub-vendors and vendor is free to purchase such additional insurance as may be determined necessary.

- I. MINIMUM SCOPE AND LIMITS OF INSURANCE: Vendor shall provide coverage at least as broad and with limits of liability not less than those stated below.

(a) Commercial General Liability - Occurrence Form

(Form CG 0001, ed. 10/93 or any replacements thereof)

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (Any one fire)	\$ 50,000
Medical Expense (Any one person)	Optional

(b) Automobile Liability - Any Auto or Owned, Hired and Non-Owned Vehicles

(Form CA 0001, ed. 12/93 or any replacement thereof.)

Combined Single Limit Per Accident	\$1,000,000
for Bodily Injury and Property Damage	

(c) Workers' Compensation and Employer's Liability

Workers' Compensation	Statutory
Employer's Liability: Each Accident	\$ 500,000
Disease-Each Employee	\$ 500,000
Disease-Policy Limit	\$ 500,000

- b. SELF-INSURED RETENTIONS/DEDUCTIBLES: Any self-insured retentions and deductibles shall be declared to and approved by the City.
- c. OTHER INSURANCE REQUIREMENTS: The policies are to contain, or be endorsed to contain, the following provisions:
1. Commercial General Liability and Automobile Liability Coverages:
 - a. Vendor's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, or employees shall be in excess to the coverage of vendor's insurance and shall not contribute to it.
 - b. Vendor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - c. Coverage provided by vendor shall not be limited to the liability assumed under the indemnification provisions of this Agreement.
 - d. Vendor's insurance shall contain broad form contractual liability coverage.
 2. Workers' Compensation and Employer's Liability Coverage: The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, agents, employees and volunteers for losses arising from vendor's operations, work or products that are the subject of this Agreement.
3. NOTICE OF CANCELLATION: Each insurance policy required by the insurance provisions of this Agreement shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City. Such notice shall be sent directly to: Ann Marie Fisher, Sr. Procurement Specialist, Purchasing Division, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, AZ 86001 and shall be sent by certified mail, return receipt requested.

4. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A-. VII. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect vendor from potential insurer insolvency.
5. VERIFICATION OF COVERAGE: Vendor shall furnish the City with Certificates of Insurance (ACORD form) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the Certificate of Insurance.

All Certificates of Insurance shall be received and approved by the City before work commences. Failure to maintain the insurance policies as required by this Agreement or to provide timely evidence of renewal shall be a material breach of this Agreement.

All Certificates of Insurance shall name the City of Flagstaff as an additional insured. All Certificates of Insurance required by this Agreement shall be sent directly to: Ann Marie Fisher, Sr. Procurement Specialist, Purchasing Division, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, AZ 86001. A description of the Contract is to be noted on the Certificate of Insurance. The City reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Agreement at any time.

6. APPROVAL: Any modification or variation from the insurance requirements in this Agreement shall have prior approval from the City's Risk Manager, whose decision shall be final. Such action shall not require a formal contract amendment, but may be made by administrative action.

H. FIRE PROTECTION

Lessee shall at all times keep and maintain in good working order at the Premises such fire extinguishing equipment and apparatus as may be required by any of Lessee's insurance policies maintained hereunder, or otherwise adequate and appropriate to Lessee's use of the Premises, and shall, from time to time and as often as reasonably required by the City, conduct appropriate tests of such fire extinguishing equipment and apparatus.

I. NON-DISCRIMINATION

1. General

Lessee shall furnish its goods and/or services at the Premises on a fair, equal and nondiscriminatory basis to all patrons and shall charge fair, reasonable and nondiscriminatory prices for each unit of service, provided, however, that Lessee may make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

2. Compliance with Civil Rights Act

Without limiting the generality of the foregoing, Lessee, for itself and its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration for this Lease, does hereby covenant and agree that, except as otherwise expressly provided herein:

- (a) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises; in the construction of any improvements on, over, or under the Premises and the furnishing of services at the Premises, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or

otherwise be subjected to discrimination; no person will be subject, on the grounds of race, color, or national origin, to segregation or special treatment in any manner related to the receipt of any goods or services furnished at or from the Premises;

- (b) Lessee shall use and operate the Premises at all times in compliance with all requirements imposed by or pursuant to 49 C.F.R. Subtitle A, Part 21, Non-discrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Acts of 1964, as amended;
- (c) Non-compliance with any of the above nondiscrimination covenants shall constitute a material breach of this Lease, and in the event of such non-compliance the City shall have the right to judicially enforce such covenants and/or to terminate this Lease and to reenter and repossess the Premises and hold the same as if this Lease had never been made or issued, provided, however, that all notice, appeal and related procedures of 49 C.F.R. Subtitle A, Part 21 are followed and completed prior to the termination; and
- (d) Lessee shall include the provisions of this Subsection I(2) in any lease, agreement, or contract by which Lessee shall grant any right or privilege to any person, firm or corporation to render accommodations, goods and/or services to the public on the Premises.

3. Affirmative Action

Lessee covenants and agrees that it will:

- (a) undertake an affirmative action program as described by 14 C.F.R. Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin or sex be excluded from employment or from receiving any goods, services or benefits of or provided by Lessee or its operations at the Premises;
- (b) comply with any affirmative action plan or steps for equal employment opportunity required by 14 C.F.R. Part 152, Subpart E, as part of such affirmative action program, or by any federal, state or local agency or court, including those resulting from a conciliation agreement, consent decree, court order or similar mechanism, provided that Lessee may use such state or local affirmative action plan in lieu of that required by 14 C.F.R. Part 152, Subpart E only when such plan fully meets the requirements of 14 C.F.R. 152.409; and
- (c) require from all contractors, subcontractors, grantees, subgrantees and sublessees of Lessee the same covenants as contained in this Subsection I(3), as required by 14 C.F.R. Part 152, Subpart E.

4. DBE Requirements

- (a) It is the policy of the City to encourage and develop disadvantaged businesses (hereinafter "Disadvantaged Business Enterprises" or "DBE's"), as defined in 49 C.F.R. Subtitle A, Part 23, and to ensure that DBE's shall have the maximum opportunity to participate in the performance of concessions, contracts and leases at the Airport. Consequently, this Lease is subject to the provisions and requirements of 49 C.F.R. Subtitle A, Part 23 and the City's DBE Concession Plan for the Airport, as each may apply.
- (b) If Lessee asserts that it qualifies as a DBE, Lessee hereby warrants, covenants and agrees that it believes in good faith that it qualifies as a DBE under 49 C.F.R. Subtitle A, Part 23 and the City's DBE Concession Plan for the Airport, and that it will use all due effort to apply for certification and be certified as a DBE, if it has not already done so. The City will employ all reasonable efforts to assist and cooperate with Lessee in making such application and obtaining such certification.

J. INDEMNITY

Lessee shall indemnify the City and hold it forever harmless from and against all liability, loss, demand, judgment or other expense (including but not limited to, defense costs, expenses and reasonable attorney fees) arising from or as a result of Lessee's use or occupancy of the Premises or any other Airport property, or from any action or omission of Lessee, its officers, employees, agents, or other representatives within the boundaries of the Airport, including movement of aircraft

or vehicles, except as may arise or result solely from negligent or willful acts or omissions of the City, its employees, agents or representatives.

K. PERFORMANCE BOND

At the time of the execution of this Lease, Lessee shall furnish the City with a valid surety bond for the term of this Agreement in a principal sum no less than one-fourth (1/4) of the Average Minimum Annual Guarantee as described in Subsection B(2) of Article IV, issued by a surety company qualified to do business in the State of Arizona and acceptable to the City, or other security acceptable to the City. The security shall be maintained and kept by the Lessee in full force and effect during the entire term of this Lease, and any extensions thereof, and shall be conditioned to assure the faithful and full performance by Lessee of the terms of this Lease and to stand as security for the payment by Lessee of any valid claim by the City against the Lessee arising under this Lease.

ARTICLE VI - OBLIGATIONS OF THE CITY

A. PROVISION OF SERVICES

The City shall, at its sole cost and expense:

1. Utilities

- (a) furnish electricity, natural gas and water as may be reasonably necessary for the conduct of Lessee's business operations at the Premises and elsewhere at the Airport;
- (b) furnish necessary heating and cooling to the Premises and the Terminal Building as the City shall reasonably determine;
- (c) provide for the collection and disposal of all refuse at the Terminal Building and elsewhere at the Airport, including containers in which Lessee shall place its refuse in accordance with the provisions of Article V, Subparagraph C(2)(b) hereof;

2. Maintenance

- (a) maintain and keep in good repair and condition the Airport, the Terminal Building and all appurtenances, facilities and central mechanical distribution systems thereof;
- (b) maintain and operate the Airport in all respects in a manner at least equal to the standards that may be promulgated by the FAA for airports of similar size and character and in accordance with all FAA rules and regulations;
- (c) keep and maintain all Airport roadways and parking areas free of snow and other obstructions insofar as reasonably practicable; and

- (d) perform normal custodial duties in the Terminal Building outside the Premises, including sweeping and dusting, removing all trash there from and taking reasonable precautions to protect the Premises and any supplies within the Premises from being tampered with, damaged, destroyed, marred, or removed, provided, however, that the City shall not thereby in any way guarantee the safety or security of the Premises and shall not be liable to Lessee or in any way responsible for injury to persons or any damage to the Premises or Lessee's supplies caused by acts of vandalism, theft or other crime.

B. LIMITATION OF LIABILITY

The City shall not, by virtue of the obligations set forth in Section A of this Article VI, be liable to Lessee for any interruption of any service or utilities beyond the control of the City, and Lessee shall, except as may be otherwise expressly set forth herein, have no cause of action against the City for constructive eviction or otherwise as a result of any such interruption. Lessee expressly agrees that the City shall not be liable to Lessee for bodily injury or for any loss or damage to real or personal property occasioned by flood, fire, earthquake, lightning, windstorm, hail, explosion, riot, strike, civil commotion, smoke, vandalism, malicious mischief, or acts of civil authority and not caused by the negligence or willful acts or omissions of City.

C. RESERVATION OF RIGHTS

1. Airport Development and Expansion

The City reserves the right to further develop or improve the landing area or any other area, building or other improvement within the present or future boundaries of the Airport as it sees fit in its sole judgment, regardless of the desires or view of Lessee and without interference or hindrance by Lessee. Further, the City retains the absolute right to maintain, repair, develop and expand the Terminal Building or any other Airport facility, Airport improvement or Airport property free from any and all liability to Lessee for loss of business or damage of any nature whatsoever as may be occasioned during or because of the performance of such maintenance, repair, development or expansion.

2. Maintenance, Repair, Direction and Control

The City further shall have the right, but not the obligation, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, including but not limited to such areas as are necessary to serve the aeronautical users of the Airport, other than as may be leased to or under the control of other Airport tenants, together with the right to direct and control all activities of Lessee in this regard.

3. Airspace

There is hereby reserved to the City and its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises, including but not limited to the right to cause or allow in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through the airspace or landing at, taking off from or operation at the Airport, without liability or obligation of any kind.

ARTICLE VII - DEFAULT AND TERMINATION

A. TERMINATION BY THE CITY

Lessee acknowledges and agrees that the City may, at its option, upon the occurrence of any of the following events, immediately or at any time thereafter, terminate this Lease and, without demand or notice, enter into and upon the Premises or any part thereof and repossess the same and expel Lessee and any persons claiming by, through, or under Lessee and remove its or their property and effects, if any, forcibly if necessary, from the Premises or elsewhere at the Airport, without being deemed guilty of trespass and without prejudice to any remedy which otherwise might be available for arrearage of rent or preceding breach of any provision hereof, and may further declare the entire balance of rents due hereunder immediately due and payable and commence an action to recover said sum from Lessee:

1. if Lessee shall be in arrears in the payment of any rent due hereunder for a period of ten (10) days or more after the City has notified Lessee thereof in writing of the default;
2. the failure or refusal of Lessee to conduct its operations at the Premises continuously as required in this Lease, and the failure or refusal shall continue for a period of not less than ten (10) days after the City has notified Lessee in writing of the default, and Lessee has failed to cure the default within the ten (10) day period;
3. the failure or neglect of Lessee to perform any of the covenants, terms and conditions hereof (other than payment of rent and continuous operation of Lessee's business operations), and the failure or neglect shall continue for a period of not less than thirty (30) days after the City has notified Lessee in writing of the default, and Lessee has failed to correct or actively begun curing the default within the thirty (30) days;
4. the voluntary abandonment by Lessee of the Premises or its operations at the Airport for a period of thirty (30) days or more;
5. the seizure or taking of possession, for a period of fifteen (15) days or more, of all or substantially all of the property used on the Premises belonging to Lessee by or pursuant to lawful authority of any legislative act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator;
6. the filing of any lien against the Premises because of any act or omission of Lessee which is not discharged or contested in good faith (as the City shall determine in its sole discretion) by proper legal proceedings within twenty (20) days of receipt of actual notice of such lien by Lessee;
7. Lessee's falsification of any of its business records or books with the intent of depriving the City of any rents or other rights under the terms of this Lease;
8. Lessee's attempt to make an assignment, transfer, merger or consolidation of its business operations at the Premises in violation of Section B of Article VIII; or
9. any permanent injunction of Lessee's conduct of business at the Premises by a court of final jurisdiction; provided, however, that if Lessee shall be temporarily enjoined from doing business at the Airport, any resulting cessation of business by Lessee, so long as the injunction remains in effect, shall not be considered a breach of this Lease or cause for termination by the City hereunder, unless and until such injunction becomes permanent.

C. ADDITIONAL REMEDIES

1. Statutory Remedies

In addition to any and all other remedies provided herein, the City, as lessor, shall be entitled to all of the remedies enumerated in Title 33, Chapter 3, Article 4 of the Arizona Revised Statutes, the provisions of which are incorporated by reference as a part of this Lease, as if the same were set forth herein in its entirety.

2. Remedies Cumulative

The remedies of the City set forth herein shall be cumulative and are not intended to be exclusive of any other remedies or means of redress to which the City may be lawfully entitled in the event of Lessee's breach of any provision of this Lease. In addition to any other remedies set forth herein, the City shall be entitled to the restraint by injunction of any violation, or attempted or threatened violation, of any of the terms, covenants conditions or other provisions of this Lease.

C. TERMINATION BY LESSEE

1. Termination for Cause

In addition to any other rights of cancellation it may have hereunder or by law, Lessee may, at any time that Lessee is not in default hereunder, terminate this Lease at its option by giving the City thirty (30) days' prior written notice of such termination, upon the occurrence of any of the following events:

- (a) An order or action by the FAA or any other governmental authority substantially terminating Lessee's right to conduct its operations at the Airport;
- (b) the issuance, by a court of competent jurisdiction, of an injunction of at least thirty (30) days' duration, prohibiting or restraining the use of the Airport as an airport or Lessee's business operations at the Airport;
- (c) a national emergency in which there is a curtailment of the use of aircraft and/or motor vehicles by the general public, or a limitation of the supply of gasoline and/or aircraft fuel available for general use either by executive decree or legislative action, which results, in fact, in a substantial curtailment of Lessee's business operations at the Airport;
- (d) a breach by the City of any material covenant of this Lease, which breach remains uncured for a period of thirty (30) days following written notice to the City;
- (e) Lessee's inability to use the Premises or to conduct its business operations at the Airport due to the City's failure to maintain the Airport or unsafe conditions at the Airport; or
- (f) the seizure or other assumption of control of the Airport by any government other than the City.

D. MEDIATION

If a dispute arises out of or relates to this Lease, other than Lessee's failure to pay rent when due, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to resolve the dispute by mediation before resorting to litigation or some other dispute resolution procedure. Mediation will be self-administered and conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, NY 10017, (212) 949-6490, www.cpradr.org, with the exception of the

mediator selection provisions, unless other procedures are agreed upon by the parties. Unless the parties agree otherwise, the mediator(s) shall be selected from panels of mediators trained under the Alternative Dispute Resolution Program of the Coconino County Superior Court. Each party agrees to bear its own costs in mediation. The parties will not be obligated to mediate if an indispensable party is unwilling to join the mediation. This mediation provision is not intended to constitute a waiver of the parties' right to initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if a party seeks provisional relief under the Arizona Rules of Civil Procedure.

E. PROPERTY UPON TERMINATION

1. Condition of the Premises

Lessee covenants and agrees that upon any termination of this Lease, however caused, it will quit and surrender the Premises and shall perform such repair of the Premises so that it is in as good condition as it was at the time this Lease was entered into, reasonable wear and tear excepted.

2. Fixtures

All fixtures installed and permanently affixed to the realty of the Premises or the Airport during the term of this Lease shall become and remain the property of the City. All signs, decorations, fixtures, and equipment which Lessee may install during the term of this Lease that have not been permanently attached to the Premises or the Airport shall remain the property of Lessee.

3. Removal of Personal Property

Upon any termination of this Lease, however caused, Lessee shall remove from the Airport, within thirty (30) days of such termination, all signs, decorations, equipment, trade fixtures and personal property belonging to Lessee or its sublessees, if any, that have not been permanently attached to the Premises or any part of the Airport.

F. DAMAGE AND DESTRUCTION

In the event of damage, destruction or substantial loss of or to the Premises or any improvements constructed upon the Premises resulting from any cause beyond the control of Lessee which materially impairs Lessee's ability to conduct its business operations at the Premises, which damage, destruction or loss is not capable of being repaired within sixty (60) days, Lessee shall have the option to terminate this Lease upon written notice to City not later than ten (10) days after the occurrence of such event. In the event of termination by Lessee under this Subsection F, Lessee shall, at its sole cost and expense, conduct and perform all cleanup and/or demolition of the Premises necessary to make the Premises ready for repair, replacement, restoration or rebuilding. In the event Lessee does not exercise such option, or in the event the damage, destruction or loss is capable of being repaired within sixty (60) days, then Lessee shall promptly repair, replace, restore or rebuild the improvements.

G. CONFLICT OF INTEREST

1. Notwithstanding anything to the contrary contained herein, the parties acknowledge in accordance with Arizona Revised Statutes §38-511 that the City may terminate this Lease upon written notice at any time within three (3) years of its execution, without penalty or further obligation, in the event that any person significantly involved in initiating, securing, drafting or creating this Lease on behalf of the City shall become an employee or agent of Lessee in any capacity or shall render consulting services to Lessee with respect to the subject matter of this Lease.

H. BUSINESS OPERATIONS IN SUDAN/IRAN

In accordance with A.R.S. § 35-391.06(A) and 35-393.06(B), Lessee certifies that the Lessee and its affiliates and subsidiaries do not have scrutinized business operations in Sudan or Iran. If the City determines that the Lessee certification is false, the City may impose all legal and equitable remedies available to it, including but not limited to termination of this Lease.

I. VERIFICATION REGARDING IMMIGRATION LAWS

Lessee hereby warrants to the City that Lessee and each of its subcontractors ("Subcontractors") will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A) (hereinafter "Lessee Immigration Warranty"). A breach of the Lessee Immigration Warranty shall constitute a material breach of this Lease and shall subject the Lessee to penalties up to and including termination of this Lease at the sole discretion of the City.

ARTICLE VIII - MISCELLANEOUS

A. FORCE MAJEURE

The performance of all covenants contained herein shall be postponed and suspended during such period as such performance is prevented by acts of God, accidents, weather and conditions arising from them, strikes, boycotts, lockouts and other labor troubles, riot, fire, earthquake, flood, storm, lightning, epidemic, insurrection, rebellion, revolution, civil war, hostilities, war, the declaration or existence of a national emergency and attendant conditions, the exercise of paramount power by the federal government, either through the taking of the Premises or the imposition of regulations restricting the conduct of business thereat, acts of enemies, sabotage, interference, restriction, limitation or prevention by legislation, regulation, decree, order or request of any federal, state or local government or any instrumentality or agency, including any court of competent jurisdiction or inability to secure labor or adequate supplies of materials, products or merchandise. The party claiming the occurrence of a condition of force majeure shall promptly notify the other party in writing of the occurrence of the condition and upon its cessation.

B. ASSIGNMENT

Lessee shall not at any time, without the prior written consent of the City:

1. assign or transfer, or permit or participate in any assignment or transfer of, this Lease or any of the rights, powers or privileges thereunder;
2. merge, consolidate, or combine, either directly or indirectly, with any other person, firm or corporation operating at the Airport under any other lease or concession agreement, whether such uniting, merging, consolidating, or combining be through the sale of property or sale of stock or otherwise; or
3. permit any of its owners, directors or officers, to serve as a director or officer, of any other firm or corporation operating at the Airport under any other lease or concession agreement.

C. FEDERAL GRANT ASSURANCES

Lessee acknowledges and agrees that this Lease shall be subject to all federal requirements set forth in the document entitled Airport Assurances, which is attached to and incorporated within this Lease as Exhibit C.

D. QUIET ENJOYMENT

The City represents that it has the right to lease the Airport and the Terminal Building, together with the facilities, rights, licenses and privileges herein granted, and has full power and authority to enter into this Lease. The City agrees that, on payment of the rent and performance of the covenants and agreements of the Lease by Lessee, Lessee shall peaceably have and enjoy the Premises and all rights and privileges of the Airport, its appurtenances and facilities.

E. NOTICES

Unless otherwise specified herein, any notice or other communication required or permitted to be given under this Lease shall be in writing and shall be effective and deemed received when hand-delivered or faxed, or, if sent by mail, three (3) business days after mailing, to the address given below for the party to be notified, or to such other address of which notice is given in accordance with this Section D:

if to the City:

City of Flagstaff

Airport Director

6200 S. Pulliam Drive, Suite 204

Flagstaff, AZ 86001

fax: (928) 556-1288

if to Lessee:

Lorraine Tallarico

Avis Budget Car Rental, LLC

6 Sylvan Way

Parsippany, NJ 07054

fax: (650) 624-0179

F. NON-EXCLUSIVITY; COMPETING USES

Nothing contained in this Lease shall be construed to grant or authorize the granting of an exclusive right prohibited federal law. The rights and privileges granted under this Lease are non-exclusive, and the City has the right to grant to others the privilege and right of conducting any and all of the aeronautical activities listed herein. Notwithstanding the foregoing, the City covenants and agrees not to enter into any similar agreement with respect to the Airport which contains more favorable terms than are contained in this Lease or to grant to potential competitors of Lessee privileges not herein authorized, unless the same are currently extended to Lessee.

G. INTENTION OF THE PARTIES

This Lease is intended solely for the benefit of the City and Lessee and is not intended to benefit, either directly or indirectly, any third party or members of the public at large. Any work done or inspection of the Premises performed by the City is solely for the benefit of the City and Lessee.

H. INDEPENDENCE OF CONTRACT

Nothing herein is intended or shall be construed as in any way creating a relationship of co-partners between the parties hereto or as constituting Lessee the agent or representative or employee of the City for any purpose or in any manner whatsoever.

I. WAIVER

The failure of City to insist in any instance or in more than one instance upon a strict performance by Lessee of any of the provisions, terms, covenants, reservations, conditions, or stipulations contained in this Lease shall not imply, constitute or be considered as a waiver or relinquishment of the right to insist upon performance of such condition or covenant, or of any other provision

hereof, nor shall any waiver by the City of any breach of any one or more conditions or covenants of this Lease constitute a waiver of any succeeding or other breach hereunder. No waiver by City of any provision, term, covenant, reservation, condition or stipulation contained in this Lease shall be deemed to have been made in any instance unless expressed in the form of a resolution by the City Council.

J. PRIOR AGREEMENTS; INTEGRATION; MODIFICATION

The parties acknowledge and agree that they have not relied upon any statements, representations, agreements or warranties, except as expressed in this Lease, and that this Lease, along with the exhibits attached hereto, constitutes the parties' entire agreement with respect to the matters addressed herein. All prior or contemporaneous agreements and understandings, oral or written, with respect to such matters are superseded and merged in this Lease. This Lease may be modified or amended only by written agreement signed by or for the party against whom enforcement of the same is sought.

K. SUCCESSORS AND ASSIGNS

All covenants and conditions of this Lease shall bind and shall inure to the benefit of the legal representatives, successors and assigns of the respective parties, provided that any representation, succession or assignment is authorized and permitted under this Lease and by law. Any and all agreements that Lessee shall make with any assignee of this Lease, and/or subleases of the Premises, or any part thereof, shall include all provisions contained in this Lease.

L. SEVERABILITY

In the event that a court of competent jurisdiction shall hold any part or provision of this Lease invalid, void or of no effect, the remaining provisions of this Lease shall remain in full force and effect, provided that continued enforcement of the remaining provisions does not materially prejudice either Lessee or the City in their respective rights and obligations contained in the valid provisions of this Lease.

M. HEADINGS

Headings or captions used in this Lease are used solely for convenience of the parties and shall not define, limit, describe, alter or affect the meaning of any provision of this Lease.

L. GOVERNING LAW

This Lease shall be governed, interpreted and enforced in accordance with the laws of the State of Arizona. Venue for any action arising under this Lease shall be in Coconino County, Arizona.

IN WITNESS WHEREOF, the City and Lessee have executed this Concession/Lease Agreement as of the day and year first above written.

CITY OF FLAGSTAFF

LESSEE

By: _____

By: _____

Its: _____

ATTEST:

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF _____)
County of _____) ss.

ACKNOWLEDGEMENT. On this ____ day of _____, 20____, before me, a Notary Public, personally appeared _____, known to me or satisfactorily that he/she executed the same on behalf of _____, an _____ corporation, for purposes therein contained.

Notary Public

My Commission Expires:
